

**Virginia Department of Conservation and Recreation  
Public Hearing on 4 VAC 5-15-00 et seq.  
Proposed Nutrient Management Training and Certification Regulations**

**June 8, 2005 in Roanoke, Virginia**

**Meeting Officer:** David Dowling  
Director of Policy, Planning and Budget  
Department of Conservation and Recreation

**Opening:**

Mr. Dowling called the public hearing on the Department's proposed Nutrient Management Training and Certification Regulations to order at the Roanoke City Council Chambers and explained that he would be serving as the meeting officer. He welcomed the attendees to the hearing.

Mr. Dowling thanked the City of Roanoke for allowing us to use this facility this evening.

Mr. Dowling requested the attendees to briefly introduce themselves.

*A list of attendees is attached.*

Mr. Dowling also introduced Russ Perkinson, the Nutrient Management Program Manager for DCR's Division of Soil and Water Conservation and Michael R. Fletcher, DCR's Director of Development. He noted that we would be audio taping our meeting and developing a set of minutes of the comments received.

Other DCR staff introduced were Christine Watlington the Policy and Budget Analyst; Stu Wilson, Assistant Director of the Division of Soil and Water Conservation; and David Kindig, Nutrient Management Training and Certification Coordinator.

Mr. Dowling requested everyone to register on the attendance list and to indicate if they wanted to speak. He noted the sign-up lists at the back.

Mr. Dowling remarked that the purpose of the hearing is to receive input from interested citizens on the Department's proposed Nutrient Management Training and Certification Regulations during our 60-day public comment period and that on the back table, outside the door, we do have copies of the regulation, the agency background statement, and an economic impact analysis that the Department of Planning and Budget prepared on the regulation. We have also provided copies of the Virginia Nutrient Management Standards and Criteria.

He noted that the Department used the participatory approach to develop the proposal. The Department formed a Technical Advisory Committee to assist in the development of the proposed regulations. The entire action is necessary to bring the regulations and the attendant documents into compliance as may be necessary with § 62.1-44.17:1.1 of the Code of Virginia and with the requirements set forth in 40 CFR Parts 9, 122, 123, and 412 as published in the Federal Register Volume 68, No. 29, dated February 12, 2003 or as may otherwise be necessary to protect water quality.

Mr. Dowling introduced Mr. Perkinson who provided the following statement.

I would like to summarize the purpose of the proposed program. Nutrient management plans are prepared for the purpose of assisting land owners and operators in the management of the land application of fertilizers, animal manures, sewage sludges and other nutrient sources for agronomic benefits and in way that protect the Commonwealth's ground and surface waters. Nutrient application to land is agronomically necessary in many cases for the economically sustainable production of crops and for other benefits including maintenance of adequate ground cover. However, if applied at excessive rates, at improper times, or if misapplied, nutrients can be carried from the field's surface or move below the plant's root zone in soils and enter ground and surface waters where they become pollutants.

I need to emphasize that these regulations do not require farmers or other nutrient users to have nutrient management plans. However, when state laws, other regulatory programs and incentive programs require nutrient management plans, they have to meet the minimum criteria that DCR will adopt in these training and certification regulations. Examples of state programs that do require nutrient management plans include: Animal Waste VPA permits for farms with 300 or more animal units, Poultry Waste VPA permits for farms with 200 or more animal units and Virginia BMP cost-share recipients for certain practices such as animal waste storage facilities. So, to repeat, these regulations in themselves do not require farmers or other nutrient users to have nutrient management plans and those instances where they are required to have plans will not increase through this action.

The recommended rates of application for specific crops contained in the regulations are based upon Virginia Cooperative Extension, Virginia Tech, and Virginia State University recommendations. For commercial vegetable crops, the regulations adopt the Commercial Vegetable Production Recommendations published jointly by Virginia Tech, the University of Delaware, the University of Maryland, Pennsylvania State University, and Rutgers University.

The Department is proposing the modification of nutrient management plan content and required nutrient management plan procedures to address several issues that have emerged since the regulations were last promulgated in 1995 and early 1996. The proposed modifications include revised criteria capable of reducing nitrogen and

phosphorus loss from land to ground and surface waters as well as other changes based on technological advances.

Modifications to phosphorus management practices are necessary to reduce water quality impacts from the land application of fertilizer, animal manure, sewage sludge, and industrial wastes. There's increased regional and national focus on management of phosphorus to reduce water quality impacts from all land-applied sources of nutrients. When the regulations were first promulgated in the mid 1990s, phosphorus was beginning to emerge as an area of significant concern with increasing scientific understanding.

Both the Virginia Poultry Waste Management Act and promulgated federal confined animal feeding regulations and associated effluent guidelines require Virginia to adopt more stringent requirements for phosphorus management standards more stringent than contained currently in the existing Nutrient Management Training and Certification regulations promulgated in the mid '90s. Other states in the Chesapeake Bay Watershed and the Natural Resources Conservation Service have also adopted more stringent phosphorus management policies.

In developing the proposed regulations, the Department sought to identify phosphorus criteria for nutrient management plans to meet several objectives. The method should: (1) protect water quality by controlling soil phosphorus concentrations or phosphorus loadings, (2) be straightforward and time efficient to apply, (3) produce consistent results when applied by different persons, (4) be relatively easy to understand and convey to farmers and other nutrient users, and (5) have the ability to be reasonably consistent or compatible with nutrient management plan software used by a number of planners in Virginia.

To provide some degree of flexibility, several alternative phosphorus management options is proposed through this action to make available to farmers and planners working with organic nutrient sources. These include: (1) the soil test method based on crop response potential, (2) the environmental threshold method, and (3) the phosphorus index method. If farmers and their planners select the phosphorus index method, two alternative methods are proposed to determine the soil loss input to the phosphorus index.

Amendments in nitrogen application criteria in nutrient management plans are primarily addressed through improved timing of land application of nitrogen-containing materials to better protect ground water from nitrate contamination and subsequent transport to surface waters. If fields are identified as environmentally sensitive in these regulations, by definition, the Department proposes that commercial fertilizer nitrogen be applied in split applied in two or more split applications during the growing season, and that organic nutrient sources be applied within 30 days of crop planting.

The Department also proposes that organic nutrient sources may be applied up to 60 days prior to crop planting on sites that are not environmentally sensitive and have an actively

growing cover crop in place. The Department proposes to exempt from these timing requirements any composted organic nutrient sources having a carbon to nitrogen ratio of at least 25:1 as long as runoff control best management practices are utilized.

Additional changes include, but are not limited to, a revised listing of Virginia soils by management group and productivity group to include those soil series established since the last adoption in mid 1990s, increased expected yields for some crops, the addition of several crops and urban land uses, and addition and modification of several defined terms.

At the conclusion of Mr. Perkinson's remarks, Mr. Dowling noted his hopes that the explanation of our regulations just provided by Mr. Perkinson would address some of the questions the attendees had when they came here this evening. He noted that before receiving testimony, he would like to stress that this is an information-gathering meeting. Everyone wishing to speak will be heard. However, due to the number of individuals present he asked those wishing to speak to limit their comments to about five-minutes and try to address information that others may not have already covered, if possible. If necessary, he noted that he might ask speakers questions concerning their testimony or to request additional information concerning a subject believed to be important to the process in order to help the clarify and properly capture their comments.

Mr. Dowling began the public comment portion of the hearing and requested that those speaking should state their name and whom they represent and if they had an extra copy of their comments, we would be happy to accept it. Remarks by the speakers are as generally follows. Mr. Dowling invited each of the following speakers to the podium.

**Mr. Roger Jefferson:** Roger Jefferson, Mountain View Farms, Pittsylvania County. Yesterday was the first time I'd heard anything about this and my recommendation would be to come tonight to pick up almost an inch-thick of information and not know very much about what the meat in the proposal is, it's a little unfair to be able make intelligent comments other than what little we've heard through the grapevine, so my recommendation would be when something like this is going on in the future, if you have a nutrient management plan permits from all of us, why couldn't we get this package in the mail a week or so before this meeting so we could be much better prepared. In the development of these changes, may I ask who was involved in making recommendations and were there any dairy producers in that process, and if so, who were they?

Mr. Dowling explained that we did have a technical advisory committee that met on four occasions. Wilmer Stoneman, from the Farm Bureau was at the table there.

Mr. Perkinson noted that the dairy industry was also represented by Gerald Garber, a producer in Augusta County.

**Mr. Jefferson:** I guess my biggest concern would be is in making this sort of stuff up, how much experience the people who are the doing the meeting have with what we go

through, the challenges we work with every day in trying to get our job completed in these windows that you're asking for.

**Mr. Tommy Motley:** I'm Tommy Motley, Pittsylvania County, representing Motley Dairy in Chatham, Virginia. When I first got this information and apparently if I hadn't gotten this information, there would be a single farmer here to speak against it, so you can notify the public is a poor excuse of what you all have done, nothing less. My brother handles the nutrient management plan. I just get to scrape it, I don't get it spread, but he went to the meeting just nearly 60 days ago in Blackstone to get recertified by DEQ. You're familiar with what I'm talking about? And I got a letter through Farm Bureau stating the public hearings and what it was about and I asked him about it. I said, what did they say at that meeting about this issue. And he said what do you mean? And I showed him the information that I had. He said they said nothing and for you to have had that many farmers that had nutrient management plans there at that meeting and not to make it known even what you were proposing, that's poor and I get every indication that this is a railroad and I can see why you came to Roanoke because we see how many people. If it hadn't of been for me asking these people to come with me, nobody would be here representing the dairy sector.

Now, if you're going to send notice about the regulations, send it out to the people who have the nutrient management plans, not the ones who are writing it. We're going to be the ones affected the most by it and I'm already talking to some people today. I've talked to several people in the last day or so. They said the cost analysis figures that you all have are way off and there's some other people working on that right now but if you're going to enforce regulations and you're going to have a "public hearing" and not notify the public about it, I don't know whose decision that was, but they did a poor job. Thank you.

**Mr. Paulson:** I'm Eric Paulson, Virginia Farm Bureau. My name is Eric Paulson and I'm currently a student at Virginia Tech. I'm majoring in dairy science and political science. Furthermore, my family has owned and operated a dairy farm in Shenandoah Valley for over two generations now. Currently, I work for Virginia Farm Bureau in governmental relations on behalf of farmers across the state. The Virginia Farm Bureau membership and its staff have worked with DCR staff and other organizations to build an equitable and practical voluntary nutrient management program. However, in recent years the program has become anything but voluntary as one regulation or another requires the development and implementation of a plan, the diminishing voluntary nature of these plans causes members such as my parents great concern, especially when they interfere with the proper management of our farms. This is especially evident regarding the proposed changes in phosphorus management.

The proposal sets the threshold for phosphorus saturation at 65% and also allows the use of phosphorus index to determine application rates for phosphorus. Both currently cut off the application of phosphorus when soil test levels reach very high. Confined livestock growers and dairymen may or often do not have the option to transport the manure to

other farms. Additionally, some crops show a positive and economic viable crop response from phosphorus application even when soil tests results are very high. Potatoes is one of them.

We therefore believe farms with confined livestock must be allowed to spread manure at a rate no less than crop removal for the expectation rotation. All nutrient management plans must allow fertilizer applications above the regulatory thresholds that are proven to show a positive and economical viable crop response. Subsequent diagnostic testing such as tissue testing and pre-plant nitrogen testing should govern the amount and timing of additional nutrient necessary to produce an economically viable crop. Crops should not suffer nutrient deficiencies due to limitations of a nutrient management plan. Weather and a wide variety of factors play a significant role in determining the ultimate rate of nutrients necessary to produce a crop. The proposed regulations limit the applications of manure to 30 days prior to planting of the intended crop. It is virtually impossible to accomplish this application of manure on a farm of any size in only 30 days. This will ultimately drive the planting of crops beyond the optimal planting time.

Additionally, on-farm storage of manure continues to be problematic for all producers of livestock and storage of biosolids at any location is both controversial and logistically difficult. We believe that timing of applications should be based on field conditions present rather than the arbitrary blocking out of the months on the calendar. Therefore, applications of manure and biosolids should be allowed in the winter months provided there is sufficient crop residue or vegetative cover and the ground is not frozen, water saturated or covered with snow. Thirty days is not logistically sufficient to apply manure prior to planting a crop. In no case should [there be] restriction of application of less than 90 days prior to planting.

Thank you for the opportunity for letting me comment on these regulations and as you can see from the group present tonight, the results of our comments in these regulations are vital to the continued survival of agriculture in the Commonwealth of Virginia.

**Mr. Roy Van Der Hyde:** Roy Van Der Hyde, Van Der Hyde Dairy in Chatham. I just, as Roger Jefferson, I'm surprised that we have to comment on all this upon just receiving the materials before me. One, I can gather, just glancing through it, there's no way that we can cover all land with manure in 30 days. It's physically not possible. It recommends we find land that is not prior owned by us if we have phosphorus problems. Well, that's not very viable solution either because most people don't farm, and, frankly, I'm getting a little tired of being the whipping boy for all phosphorus problem being blamed on livestock. I don't see anything in any of these regulations that affect anyone spreading fertilizer. I mean, why isn't tobacco farmers, you know, in this plan and for reducing phosphorus on their fields. Why is production livestock always the whipping boy for these water quality issues? I don't mind being regulated, but I want a fair, even plan and I don't think that this is applying fairly across the board. Thank you.

Mr. Dowling inquired if anyone else wished to speak. Hearing none he thanked each speaker for their comments. He noted that persons desiring to submit written comments pertaining to this notice and this meeting may do so by mail, by Internet, or by facsimile and certainly you are strongly encouraged to do so. Comments should be sent to the Regulatory Coordinator at the Virginia Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, Virginia 23219 or comments may be faxed to the Regulatory Coordinator at 804-786-6141 or additional electronic comments may be submitted through the Regulatory Town Hall by navigating through the site the DCR's nutrient management certification and training regulations and that web site at: [www.townhall.state.va.us](http://www.townhall.state.va.us). That's where all public notices to the meetings officially are posted and 1 of the avenues through which the public is notified of all meetings and all comments must include the name and address of the commenter, e-mail addressed would be appreciated also. In order to be considered, comments must be received by 5:00 PM on July 1, 2005, so the public comment period is a 60-day public comment period and you have until July 1, and again, I certainly encourage you each of you, if you have concerns, please send us written comments so that we may consider them as part of the regulatory process.

Mr. Dowling thanked the audience for attending the meeting and for providing DCR with their views and comments and wished everyone a safe trip home.

The hearing officially closed at 8:00 p.m.

**ATTENDEES**

Roger Jefferson, Mountain View Farms Dairy, Pittsylvania County  
Tommy Motley, Motley Dairy, Chatham  
Eric Paulson, Farm Bureau  
Roy Van Der Hyde, Van Der Hyde Dairy, Pittsylvania County  
Kathleen Van Der Hyde, Van Der Hyde Dairy, Chatham.  
Mac McCutchen, Pepper's Ferry R.W.T.A.  
Wilmer Stoneman, Virginia Farm Bureau  
Jim Harper, Harper Dairy, Inc., Pittsylvania County  
Greg Mullins, Virginia Tech  
Hunter Richardson, Synagro

**Virginia DCR Staff Present**

David Dowling, Director of Policy, Planning and Budget  
Russ Perkinson, Nutrient Management Program Manager  
Michael R. Fletcher, DCR's Director of Development  
Christine Watlington, Policy and Budget Analyst  
Jack Frye, Director of the Division of Soil and Water Conservation  
Stu Wilson, Assistant Director of the Division of Soil and Water Conservation  
David Kindig, Nutrient Management Training and Certification Coordinator.